

# **EXHIBIT H**

## **PART 5**

1 A. Yes.

2 Q. How does the judicial value system work?

3 A. The judicial value system is often  
4 responsible for making changes in technology. If  
5 the -- if, for example, the judicial value system  
6 comes out with a pattern of verdicts against, let's  
7 say, a -- what would be a good example -- metal  
8 fuel tanks that explode in collision, the judicial  
9 value system by coming out with verdicts against  
10 metal fuel tank manufacturers will encourage a  
11 change in technology to make the fuel tanks made  
12 out the plastic, for example.

13 Q. Is that a value system that you as an  
14 engineer would deem appropriate to use in making a  
15 decision as to incorporate a safety feature that  
16 has upside and a downside?

17 MR. ROBINSON: Objection to the form.

18 THE WITNESS: Yes, it can be, especially when  
19 the judicial system is comprised of more than one  
20 judge. Much like our Supreme Court where the  
21 justices will not necessarily all agree with one  
22 another but there will still be a consensus.

23 BY MR. HARTMAN:

24 Q. I am looking for the article that talks

1 about -- I am sorry.

2 In Switalski Exhibit No. 6, Principles of  
3 Human Safety, you have the intrinsic classification  
4 of safeguarding system on Table III of page 5?

5 A. All right.

6 Q. Do you agree that that table of systems  
7 should be followed?

8 MR. ROBINSON: Objection to the form.

9 THE WITNESS: It is not a table of should  
10 follow or shouldn't follow. It is a statement of  
11 factual observation that every safety device falls  
12 into one of these eight categories.

13 BY MR. HARTMAN:

14 Q. Do you agree that if it is a --

15 A. I am sorry. Seven categories.

16 Q. Do you agree if it is a Category 1 or 2,  
17 it should always be included -- the safety device  
18 should always be included with the product?

19 A. Yes, if there is a safety device that is  
20 associated only with upsides or has no effect on  
21 the safety of a system, it is better to include it  
22 than not include it.

23 Q. If it is a Class 4 or 5, you would include  
24 it only if a value system approved of it, correct?

1 A. Yes.

2 MR. ROBINSON: Hold on. Objection to the form.

3 THE WITNESS: Yes.

4 BY MR. HARTMAN:

5 Q. Do you agree that it is proper to --  
6 strike that.

7 Do you agree that if the safety device in  
8 this situation such as a foot control that is a  
9 Class 4 or 5 can only be incorporated in the  
10 product if it meets some type of approval?

11 MR. ROBINSON: Objection to the form.

12 THE WITNESS: What I am saying in my report is  
13 that when you have a proposed safety device and  
14 with that safety device is a potential negative  
15 effect, a downside, before an individual designer  
16 or an individual manufacturer includes a product of  
17 that nature into its larger product, the guidance  
18 given by a value system should be existing.

19 BY MR. HARTMAN:

20 Q. Okay. We are saying the same thing.

21 A. Okay.

22 Q. Okay. So an engineer doesn't make the  
23 decision to include a Class 4 or 5 safety system  
24 absent a value system approval?

1           A.    An individual engineer should not.  A  
2   group of engineers, however, can through consensus  
3   and that's basically your standards and codes  
4   committees.

5           Q.    Okay.  But just to clarify the record,  
6   I am just breaking it down into two pieces what you  
7   have just said.

8                   Am I correct that an individual engineer  
9   does not include a Class 4 or 5 safety device in a  
10  product absent a value system approving it?

11          A.    They should not, correct.

12          Q.    If the value system approves it, then it  
13  should be incorporated?

14          MR. ROBINSON:  Objection to the form.

15          THE WITNESS:  It would be reasonable on the  
16  part of the individual product manufacturer or  
17  engineer to incorporate it then because a value  
18  system has given its approval for use.

19          BY MR. HARTMAN:

20          Q.    Okay.  Now if it is a group of engineers  
21  that come together, they can -- they can form their  
22  own value system to approve of the safety system  
23  that is a Class 5, 4 or 5?

24          A.    Yes.

1 Q. Let's turn to the next page, please.

2 It says, further evaluation to proposed  
3 front gate. You cite a Safeguard Evaluation  
4 Protocol, A Decision Tree For Standardizing,  
5 Optionalizing, Prohibiting, Ignoring, Enhancing Or  
6 Characterizing Safeguards; am I correct?

7 A. Yes.

8 Q. Do you have that article with you?

9 A. I do.

10 Q. May I see it, please?

11 (Whereupon, a discussion was  
12 had on the video record but off  
13 the written record.)  
14 (Whereupon, SWITALSKI Deposition  
15 Exhibit No. 7 was marked for  
16 identification.)

17 BY MR. HARTMAN:

18 Q. You cite the Safeguard Evaluation  
19 Protocol, Switalski Exhibit No. 7?

20 A. Yes.

21 Q. Is that an article that you have read?

22 A. Yes, it is.

23 Q. Is that an article that you co-authored?

24 A. No, it is not.

1 Q. Did you provide any part of that article?

2 A. No.

3 Q. Is that an article that you find a  
4 authoritative?

5 A. Yes, it is.

6 Q. Is it an article that you rely upon in  
7 making your decisions as to safety features to be  
8 included in a product?

9 A. Yes.

10 Q. I notice one of the examples is a seat  
11 belt that's utilized in analyzing a Class 4 or 5?

12 A. Yes, I believe it is the Class 4 because  
13 the seat belt is a good example of a safety device  
14 that sometimes hurts, sometimes helps and sometimes  
15 does nothing.

16 Q. So I am just asking you, so I know that  
17 there is another organization that oversees seat  
18 belts but I don't know the particulars about it.  
19 But, let's say, ANSI approved of seat belts in  
20 cars, let's assume. Would that be sufficient  
21 justification to include seat belts with cars?

22 A. Yes.

23 Q. Would a reasonable engineer include seat  
24 belts with cars if ANSI approved of such a thing?

1           A.   Well, again, ANSI isn't going to make the  
2   approval but, yes.

3           The code committee will make the approval  
4   and then it would be reasonable for an individual  
5   engineer who works for an individual manufacturer  
6   to go ahead and use it.

7           Q.   Okay. Would you -- if ANSI said it is  
8   okay to put seat belts in cars, let's just assume  
9   for me that the ANSI committee, the ANSI -- start  
10  all over please.

11           Let's say the ANSI standard stated that it  
12  was okay to put seat belt in cars?

13          A.   Yes.

14          Q.   Would that be a value system that would  
15  permit seat belts to be placed in cars?

16          A.   Yes.

17          Q.   Would it be a value system that an  
18  engineer should follow in placing seat belts in  
19  cars?

20          MR. ROBINSON: Objection to the form.

21          THE WITNESS: Yes, because it involves a  
22  consensus group.

23          BY MR. HARTMAN:

24          Q.   Would it be a standard -- would it be a



1 value system that would mandate their use in cars?

2 A. No, ANSI does not carry the power of law  
3 except in those situations where it has been  
4 adopted by reference, where the ANSI standards have  
5 been adopted by reference into OSHA and the like  
6 which does carry the power of law.

7 Q. So the -- would you -- if the ANSI  
8 standard said seat belts were approved, would you  
9 expect that a reasonable engineer would include  
10 seat belts with cars?

11 A. Yes, I would.

12 MR. HARTMAN: We are going to have to leave  
13 that because she is going to need to copy it and  
14 get it back to you.

15 THE WITNESS: Okay, that's fine.

16 BY MR. HARTMAN:

17 Q. I would ask you to assume that a judicial  
18 system says that if the cost of the safety feature  
19 is outweighed by the benefit of the safety feature,  
20 would that be a value system that would be followed  
21 by a reasonable engineer?

22 MR. ROBINSON: Objection to the form.

23 THE WITNESS: It would not only be a value  
24 system but the engineer's codes of ethics would

1 likewise reject something where cost outweighs  
2 benefits.

3 BY MR. HARTMAN:

4 Q. And as part of the cost I am indicating,  
5 you know, like a seat belt, the downside of the  
6 seat belts are outweighed by the people saved; you  
7 understand that?

8 A. Yes, if the seat belt, for example, cost  
9 \$10,000 to put into an automobile, we may not have  
10 them because the cost is so high.

11 Q. Actually, I was going in a little  
12 different direction. When I talk about the cost  
13 versus the benefit, I am talking about the economic  
14 cost and the increase in danger, for example, in a  
15 seat belt. The cost might be a hundred dollars per  
16 seat belt, and it might be that you might have  
17 5,000 people hurt by the seat belt. The benefit  
18 might be that you are saving a hundred thousand  
19 people -- and I am just exaggerating to give you an  
20 example -- and the cost associated with those  
21 injuries might far outweigh the hundred dollars per  
22 car.

23 If the judicial system has that as the  
24 value system, would it be reasonable for the

1 engineer to include the seat belt with the  
2 automobile?

3 MR. ROBINSON: Objection to the form.

4 THE WITNESS: In other words you are saying if  
5 there were a value system out there who rejects the  
6 seat belt such as the judicial value system?

7 BY MR. HARTMAN:

8 Q. No, no, I am saying the judicial value  
9 system -- if the judicial value system says that in  
10 order to determine whether a safety item should be  
11 placed on a product, you weigh the cost of the  
12 item, meaning economic, and increase in injury,  
13 versus the benefit, meaning less people being  
14 injured and money saved.

15 A. Yes.

16 Q. Would that be a value system that a  
17 reasonable engineer would utilize to make a  
18 determination to include a safety feature on a  
19 product?

20 MR. ROBINSON: Objection to the form.

21 THE WITNESS: Oh, absolutely.

22 BY MR. HARTMAN:

23 Q. Would you answer that please?

24 A. Absolutely.

1 Q. Is that a reasonable value system?

2 A. Yes.

3 Q. Is that a value system that you have ever  
4 used?

5 A. I don't know that I have been in the  
6 position to have to choose whether or not to  
7 include a new proposed safety device other than in  
8 the framework of litigation matters like we are  
9 doing here today.

10 But, yes, I would say I have used it  
11 because in effect that's what I am doing with  
12 regard to the front gate that Barnett is proposing  
13 for press brake foot controls.

14 BY MR. HARTMAN:

15 Q. Okay. What is the cost of the front gate?

16 A. I don't know.

17 Q. No. I am saying what is the cost that you  
18 factored in?

19 A. What is the cost -- I haven't factored in  
20 any cost.

21 Q. Okay. What is the benefit of the front  
22 gate?

23 A. The benefit of the front gate is that it  
24 will reduce the likelihood of inadvertently

1 stepping into a foot control.

2 Q. Okay. On page 9, Item No. 2, the last  
3 sentence of your report, you indicate it is not  
4 possible to prevent someone from inadvertently  
5 stepping into the pedal when the intended use of  
6 the pedal involves stepping on it. This holds true  
7 for the proposed front gate. Its use is not a  
8 guarantee that an inadvertent activation will not  
9 or cannot occur.

10 Would I be correct in indicating that  
11 there is no guarantee with any safety device that  
12 injury will not occur?

13 A. Yes, that is true. And I think it is  
14 especially true for the foot switch gate because  
15 intending to activate the foot switch involves in  
16 effect getting past that gate.

17 Q. But if you are not intending to activate  
18 the foot switch and somehow your foot gets in  
19 there, the gate does protect you if there is no  
20 intent?

21 MR. ROBINSON: I will object to the form.

22 THE WITNESS: If you are not intending to  
23 activate the foot switch and your foot gets in,  
24 then by definition the gate hasn't protected you.

1 BY MR. HARTMAN:

2 Q. No. I am saying the gate would protect  
3 you in that situation. If you are outside the foot  
4 switch and you are not intending to activate it and  
5 somehow your foot goes forward, the gate protects  
6 you from that situation; am I correct?

7 MR. ROBINSON: Objection -- excuse me. I am  
8 sorry to interrupt. Objection to the form.

9 THE WITNESS: Sometimes it will and sometimes  
10 it will not.

11 BY MR. HARTMAN:

12 Q. Do you have any studies as to the  
13 percentage of times it would protect you in that  
14 situation versus when it will not protect you?

15 A. No, I am not aware of any study of that  
16 nature that's ever been performed.

17 Q. If the gate operates as it is intended to  
18 do, it will protect you from inadvertently placing  
19 your foot into the foot pedal when it is down?

20 MR. ROBINSON: Objection to the form.

21 THE WITNESS: Again, sometimes it will and  
22 sometimes it won't.

23 MR. ROBINSON: That's been asked and answered.

24

1 BY MR. HARTMAN:

2 Q. What situations will it not?

3 A. The situation where someone inadvertently  
4 steps into the foot control and gets past the gate,  
5 the same way that someone who is intending to  
6 operate the foot control gets past the gate.

7 The same foot motion can occur in both  
8 instances. One time the operator wants to activate  
9 the pedal; the other time they don't. But it is  
10 the same motion that will get someone into the  
11 pedal in either situation.

12 Q. Would it inhibit that from occurring?

13 MR. ROBINSON: Objection to the form.

14 THE WITNESS: That's a very difficult one to  
15 address because when the inadvertent actuation  
16 occurs, it hasn't inhibited it. When the  
17 inadvertent actuation doesn't occur, then it has  
18 inhibited it.

19 BY MR. HARTMAN:

20 Q. Let's assume there were a hundred  
21 opportunities for it to occur, do you have any data  
22 that would suggest that how many times out of that  
23 hundred, the gate would not inhibit it as opposed  
24 to inhibit?

1 MR. ROBINSON: Objection to the form.

2 THE WITNESS: No, as I have already said, there  
3 is no study to my knowledge that has ever been  
4 conducted along those lines by anyone.

5 BY MR. HARTMAN:

6 Q. You are just basing your statement on the  
7 fact that it could occur that way?

8 A. Yes.

9 Q. You have no data to indicate that?

10 A. Correct.

11 Q. From a safety standpoint do you have an  
12 opinion as to whether or not a foot pedal is safer  
13 in protecting against inadvertent operation of the  
14 machine as opposed to a foot control?

15 MR. ROBINSON: Objection to the form.

16 THE WITNESS: Yes, I believe that the features  
17 associated with the older style mechanical pedal  
18 are less likely to involve inadvertent actuation  
19 because you do have to raise your leg up higher.  
20 It is typically higher off the floor. It typically  
21 has a higher activation force. And I think Barnett  
22 pointed out all of those things in his report.

23 BY MR. HARTMAN:

24 Q. You agree with that?



1 A. Yes.

2 MR. ROBINSON: Let me object to the form.

3 I don't know what "that" means.

4 BY MR. HARTMAN:

5 Q. What you just stated?

6 A. Yes.

7 Q. And you agree with Professor Barnett's  
8 treatise on that issue?

9 MR. ROBINSON: I will object to the form. What  
10 treatise are we referring to?

11 BY MR. HARTMAN:

12 Q. Statement relating to that issue?

13 A. Yes, I simply pointed out on the flip side  
14 features associated with the foot control that  
15 Barnett didn't talk about.

16 Q. And that would be outlined in paragraph 6  
17 on page 10 of your report?

18 A. Yes.

19 Q. Do you have anything to add to paragraph 6  
20 in your report as it relates to the safety features  
21 the foot control provides?

22 MR. ROBINSON: Other than what's in his report?

23 MR. HARTMAN: He specifically indicated that  
24 with regard to the safety features the foot control

1 provides that are not found on a foot pedal are  
2 contained in paragraph 6.

3 BY MR. HARTMAN:

4 Q. Am I correct, sir?

5 A. Yes, I tried to be all-inclusive in  
6 paragraph 6; and I see I have included the safe  
7 distance, the ability for the operator to be  
8 seated, the reduction of operator fatigue and the  
9 reduction in the need for an operator to stand  
10 balanced on one leg are all safety features  
11 associated with the foot control that are not  
12 common to the older foot pedal.

13 BY MR. HARTMAN:

14 Q. Right. That's the difference between a  
15 foot control and a foot pedal as it relates to  
16 safety is in paragraph 6?

17 MR. ROBINSON: I will object to the form of  
18 that question.

19 THE WITNESS: Yes.

20 BY MR. HARTMAN:

21 Q. Sir, if -- I want you to assume for me  
22 that Ms. Lindquist was not riding the pedal and did  
23 not intend to activate the foot pedal at the time  
24 of her accident.

1           A.    Well, I certainly agree that she did not  
2   intend to activate it.

3           Q.    Would you agree that if there was a gate  
4   on the foot control and her foot was outside of the  
5   foot control at the time of this unintended  
6   activation and the gate worked as it was expected  
7   to, meaning preventing her foot from going into the  
8   foot control, that this accident would not have  
9   occurred?

10          MR. ROBINSON: I object to the form of the  
11   question and the hypothetical.

12          THE WITNESS: The gate is not designed to  
13   prevent her foot from getting into the foot  
14   control. It is specifically designed to allow an  
15   operator to get their foot into the foot control  
16   otherwise the foot control is a useless piece of  
17   equipment. So, no, it is not -- the presence of a  
18   gate on that foot control does not guarantee that  
19   this accident would not have happened.

20   BY MR. HARTMAN:

21          Q.    I am not asking that.

22                Would you agree that a gate is intended to  
23   prevent unintended activation of the foot control?

24          A.    That's the only reason the gate is there,

1 yes.

2 Q. Okay. So if the gate is on the foot  
3 pedal -- strike that.

4 If the gate is on the foot control and  
5 Ms. Lindquist's foot is outside of the foot control  
6 and the gate does what it is intended to do, which  
7 is prevent unintended entrance into the foot  
8 control, would you agree this accident wouldn't  
9 have occurred?

10 MR. ROBINSON: I will object to the form of  
11 that question.

12 THE WITNESS: Yes.

13 BY MR. HARTMAN:

14 Q. And on paragraph 8 on page 10, would it be  
15 a fair statement -- I think I have asked you this  
16 -- but would it be a fair statement to say that you  
17 don't know what model foot control came with this  
18 machine at the time it was sold in 1978?

19 A. Yes.

20 Q. Did you see anything in all of the  
21 depositions that led you to believe -- that  
22 indicated that Ms. Lindquist was riding the foot  
23 pedal at the time of this accident?

24 A. No, I saw no specific indicators that she

1 was not -- that she was riding the foot pedal.

2 I guess the only reason a suspicion to the  
3 contrary may remain in my mind is that no  
4 explanation was ever offered or given as to how the  
5 inadvertent actuation took place.

6 Q. Would you expect that someone who loses  
7 eight of her, all eight of her fingers in a machine  
8 would know how the activation took place?

9 MR. ROBINSON: I will object to the form of  
10 that question. That's quite improper. You are  
11 asking him to speculate as to what she would know.

12 THE WITNESS: I guess I investigated enough  
13 injuries to know that sometimes there is total  
14 amnesia on the part of the victim. Certainly this  
15 injury is extremely traumatic; and I guess, no,  
16 I wouldn't be surprised that Mrs. Lindquist would  
17 be unable to determine how her foot contacted the  
18 pedal. And again simply because no explanation has  
19 been offered as to how the inadvertent activation  
20 took place at least leaves some suspicion in my  
21 mind with regard to whether there was riding the  
22 pedal going on.

23 BY MR. HARTMAN:

24 Q. You have -- you are aware that there is

1 nothing mechanically wrong with regard to the press  
2 brake, correct?

3 A. Correct.

4 Q. Okay. And would you agree that this  
5 accident occurred by use of the foot control?

6 MR. ROBINSON: I will object to the form of  
7 that question.

8 BY MR. HARTMAN:

9 Q. By activation of the foot control?

10 A. Yes, there was no other activation means  
11 that anyone has identified to cause the press to  
12 cycle.

13 Q. So your opinions and your -- strike that.  
14 Your investigation of this accident leads  
15 you to believe that there was activation of the  
16 machine by the foot pedal that caused this  
17 accident?

18 A. Yes.

19 MR. HARTMAN: Can we go off the record for a  
20 minute?

21 THE VIDEOGRAPHER: Off the record at 12:01 p.m.

22 (A short break was taken.)

23 THE VIDEOGRAPHER: This is the beginning of  
24 Tape No. 3. Back on the record at 12:06 p.m.

1 BY MR. HARTMAN:

2 Q. In your report you have excerpts of the  
3 testimony of people that have been deposed in this  
4 case; am I correct?

5 A. Yes.

6 Q. Does your report contain all of the  
7 excerpts that you believe relevant to formulating  
8 the opinions that are contained in your report?

9 MR. ROBINSON: Object to the form of that  
10 question.

11 THE WITNESS: I believe there are. I would  
12 have included anything else that I felt needed to  
13 be used to support my opinions otherwise.

14 BY MR. HARTMAN:

15 Q. Okay. Tell me about the split of your  
16 business between plaintiffs and defendants.

17 A. I am going to estimate that perhaps  
18 three-quarters of my business is defense and the  
19 remaining quarter plaintiff as it exists today.

20 Q. Does it matter to you who retains you as  
21 to what your opinion is?

22 A. Well, I typically have I good feel for  
23 what direction my opinions have to go in before  
24 I'll formally accept an assignment; and if I feel

1 that positions I have taken in the past or the  
2 position that the client will express to me from  
3 the get-go that they want to hear is something that  
4 I disagree with or isn't compatible with what  
5 I have written or testified to in the past, then  
6 I wouldn't accept it.

7 BY MR. HARTMAN:

8 Q. Would it be a fair statement that you form  
9 your opinions independent of who hires you?

10 A. Yes.

11 Q. When you were with Professor Barnett, did  
12 you do the same?

13 A. Yes, I did, especially with regard to the  
14 cases where the client expected me to do the  
15 testifying. There were certainly occasional cases  
16 where I didn't necessarily agree with Professor  
17 Barnett's opinion but I worked on it anyway because  
18 the client wasn't interested in my opinion. They  
19 were interested in Professor Barnett's opinion.

20 Q. But was his opinion at that time  
21 independent, meaning was it his honest opinion to  
22 the best of your knowledge?

23 MR. ROBINSON: Object to the form of the  
24 question. I will still object to the form of that



1 question.

2 THE WITNESS: As far as I can tell.

3 BY MR. HARTMAN:

4 Q. Well, you worked for the man for 20 years;  
5 am I correct?

6 A. Plus.

7 MR. ROBINSON: You can go through all of those  
8 things, Mr. Hartman. You have that. That's asked  
9 and answered. You know how long he has worked for  
10 him. It is already put down. He is not going to  
11 know internally Professor Barnett's comment, as he  
12 said, the best he can tell.

13 BY MR. HARTMAN:

14 Q. Make a long story -- would you agree that  
15 you have no information as to whether Professor  
16 Barnett chooses to mold his opinion based on who  
17 retains him?

18 MR. ROBINSON: Object to the form of the  
19 question.

20 THE WITNESS: I have no special reason to  
21 believe he would do that.

22 BY MR. HARTMAN:

23 Q. Okay. Just trying to clarify. You have  
24 worked with him. I don't know if in the middle of

1 the case Mr. Robinson might ask you something  
2 personal about your relationship with Professor  
3 Barnett. I have to ask these questions because you  
4 have that relationship. I need to get it on the  
5 record so I am not surprised if you would have that  
6 information and Mr. Robinson would ask that during  
7 the trial. Do you understand why I am doing that?

8 A. Yes.

9 Q. So basically you have no opinion as to  
10 Professor Barnett ever doing anything that would be  
11 suggestive of molding his testimony for a  
12 particular client?

13 A. Well, I think had that occurred it  
14 wouldn't be a matter of opinion either. I mean it  
15 either did occur or didn't occur. It is a fact  
16 matter and I can't -- I can't say that I have ever  
17 seen Professor Barnett do that including those  
18 instances where I disagreed with his opinion.  
19 There are many times when reasonable people  
20 disagree with one another.

21 BY MR. HARTMAN:

22 Q. Thank you. I needed to clarify that.

23 With regard to Linemaster products, would  
24 a -- would you expect Heim to have relied upon

1 Linemaster to select the foot pedal that  
2 accompanied this machine or would you expect Heim  
3 to select the foot pedal that would accompany the  
4 machine?

5 MR. ROBINSON: I will object to the form of the  
6 question.

7 THE WITNESS: I would expect Heim to do the  
8 selecting.

9 BY MR. HARTMAN:

10 Q. Of the foot pedal?

11 A. Yes.

12 Q. And why is that?

13 A. Linemaster is even further removed from  
14 the ultimate use of their product. Heim has  
15 expertise in foot pedals, not press brakes.

16 Q. So Heim would know what foot pedals to  
17 include with this --

18 A. I am sorry. Linemaster. I think I said  
19 Heim.

20 Linemaster has expertise in foot pedals,  
21 not in press brakes. Heim is the expert in press  
22 brake manufacture. Cory Manufacturing is the  
23 expert or supposed to be the expert in press brake  
24 use.

1 Q. But Heim would be the expert in selecting  
2 the foot pedal that would be standard equipment  
3 with its press brake?

4 MR. ROBINSON: Objection to the form of the  
5 question.

6 THE WITNESS: Yes.

7 MR. HARTMAN: Sir, thank you for your time.  
8 I have no further questions.

9 EXAMINATION

10 BY MR. ROBINSON:

11 Q. Sir, would the end-user be in the best  
12 position to select a foot control for a press  
13 brake?

14 A. Yes.

15 Q. And was that a conclusion reached in  
16 Professor Barnett's Exhibit 4, Foot Controls:  
17 Riding the Pedal in No. 9 where he lays out the  
18 factors that Professor Barnett yesterday indicated  
19 that on a number of them would be known by the  
20 end-user?

21 A. Yes, I think he neatly summarizes many of  
22 the different factors that go into foot pedal  
23 selection; and the machine tool manufacturer is  
24 just not in a position to know things that are

1 listed here such as a point of operation  
2 safeguarding, operator movement in the work space  
3 and so forth.

4 Q. Do you know if Avco Lycoming, the original  
5 purchaser of this press brake, chose the model of  
6 foot control they wanted with the machine; do you  
7 know one way or the other?

8 A. I have no reason to believe they did or  
9 didn't. I just don't have any information.

10 Q. Has anyone ever -- does any evidence exist  
11 that you are aware of in your review of this case  
12 to suggest that Heim made the decision as to which  
13 one to supply with the press brake that was sold to  
14 Avco Lycoming through HB Machinery the distributor  
15 in 1978?

16 A. No, I have seen no documentation from  
17 either end as to who made that decision.

18 Q. The press brake I think was referenced in  
19 the beginning of your deposition to have a capacity  
20 of 35 strokes per minute; is that right?

21 A. Yes, the press brake involved in this  
22 injury.

23 Q. Are there many power presses that have a  
24 capacity of less than that, 35 strokes per minute?

1           A.    Yes, there certainly are. As you get  
2   higher and higher in power press or punch press  
3   tonnage, the machines get considerably slower than  
4   that.

5           Q.    Okay. And when you mentioned that the  
6   term power press can be used as both press brakes  
7   and for punch press, what are you referring to?

8                   I asked you before we went on the record  
9   after the break to pull out the ANSI standards for  
10  power presses, mechanical power presses and for  
11  power press brakes. And I see the term power  
12  presses, power press used in both standards. Is  
13  that what you are referring to when you say the  
14  word power press --

15          A.    Yes.

16          Q.    -- has been used in both vernaculars?

17          A.    Yes, the phrase power press appears in the  
18  title of both the punch press safety standard as  
19  well as the press brake safety standard.

20          Q.    And I guess they are both presses of some  
21  sort and they are both powered; does that make  
22  sense?

23          A.    Yes.

24          Q.    You attached some exhibits to your report,

1 one of which is the illustration of a foot control  
2 in the ANSI standard B11.3, 1973, applicable to  
3 power press brakes; is that right?

4 A. Yes, I did.

5 Q. Does that illustration contain a gate?

6 A. It does not.

7 Q. Do you know of any -- I notice that the  
8 ANSI standards subsequent to 1973 including the one  
9 you attached as Exhibits 4 for 1982 -- excuse me --  
10 5 for 1982 and 6 for 2002 also contain  
11 illustrations and it appears that neither of those  
12 subsequent ANSI compilations in the illustrations  
13 of foot controls show foot controls with gates as  
14 well; is that correct?

15 A. That's also correct.

16 Q. Do you know of any ANSI standard, ANSI  
17 commentary or ANSI illustration that either -- that  
18 requires the use of a gate?

19 A. No.

20 Q. Do you know of any ANSI standard,  
21 explanation, commentary or illustration that  
22 suggests that a gate should be used?

23 A. I believe the most current mechanical  
24 power press standard has a page of illustrations of

1 different styles of foot controls and one of them  
2 does have the front gate.

3 Q. Is that for the power press or for the  
4 power press brake?

5 A. For the mechanical power press, not the  
6 brake.

7 Q. I didn't ask my question very clear.  
8 I appreciate that clarification.

9 Do you know of any ANSI standard relative  
10 to power press brakes or explanatory comments or  
11 illustrations that suggest a gate should be used on  
12 a foot control?

13 A. No.

14 Q. In working with Professor Barnett for  
15 20-plus years, did Professor Barnett ever indicate  
16 to you a distinction as to when a gate should be  
17 used on a foot control based upon whether or not  
18 the foot control was used on a power press brake or  
19 a mechanical power press?

20 A. No, he did not.

21 Q. Does his article that he wrote that has  
22 been attached as Exhibit 4 titled Foot Controls:  
23 Riding the Pedal make any distinction between the  
24 use of a gate and the dangers caused by that gate



1 that is riding the pedal, increased frequency of  
2 riding the pedal, does the article make any  
3 distinction between the gate being used on foot  
4 controls applied to mechanical power presses or  
5 mechanical press brakes?

6 A. No, it does not.

7 Q. And do you know of any other occasion  
8 where Professor Barnett has expressed an opinion,  
9 whether it be in his writings, through his  
10 teachings, through his training of his employees or  
11 in any situation where Professor Barnett has  
12 attempted to draw the distinction that he is in  
13 this case, that is that a gate should be used on a  
14 power press brake but not on a power press?

15 A. No, I don't. This particular project is  
16 the first time I have heard him express an opinion  
17 of that nature.

18 Q. Has this come as a surprise to you?

19 A. It has, yes.

20 MR. ROBINSON: Those are all of questions  
21 I have.

22 MR. HARTMAN: A couple of questions

23 FURTHER EXAMINATION

24 BY MR. HARTMAN:

1 Q. Do you agree with the statement that  
2 although power presses and power press brakes are  
3 both metal forming machines there exist significant  
4 differences in the operation and safety aspects of  
5 these machines to justify two different safety  
6 standards?

7 A. Yes.

8 Q. So there are significant differences  
9 between power presses and press brakes?

10 A. Yes.

11 Q. So much so that two standards exist?

12 MR. ROBINSON: He said that. Asked and  
13 answered. Both were included in this question.  
14 You don't need to wave me off. That's very rude  
15 and unprofessional. He has answered those  
16 questions.

17 BY MR. HARTMAN:

18 Q. Let me follow up on that.

19 MR. ROBINSON: Pardon me. I didn't hear what  
20 you said.

21 MR. HARTMAN: I don't know what I said.  
22 I didn't know I said something.

23 BY MR. HARTMAN:

24 Q. You were asked some questions and I am

1     sorry but I believe that Switalski Exhibit No. 4  
2     that says Foot Controls: Riding the Pedal  
3     specifically indicates that you select a foot pedal  
4     based on a particular machine for which the foot  
5     pedal is to be utilized, am I correct?

6           MR. ROBINSON: Object to the form of the  
7     question.

8           THE WITNESS: I believe so, yes.

9     BY MR. HARTMAN:

10          Q.    So a power press and a press brake are two  
11     distinct types of machine, correct?

12          A.    Yes.

13          MR. ROBINSON: Objection, asked and answered  
14     numerous times.

15     BY MR. HARTMAN:

16          Q.    So you would select the foot pedal for a  
17     press brake based on press brake issues, not power  
18     press issues?

19          MR. ROBINSON: Objection, asked and answered.

20     BY MR. HARTMAN:

21          Q.    Go ahead.

22          A.    Yes.

23          Q.    And you would pick a foot pedal for a  
24     punch press based on punch press issues, correct?

1 MR. ROBINSON: Objection to form and asked and  
2 answered.

3 THE WITNESS: Yes.

4 BY MR. HARTMAN:

5 Q. So while Professor Barnett did not  
6 distinctly say punch presses and press brakes in  
7 his article, which has been identified as Switalski  
8 Exhibit No. 4, he did indicate that you choose the  
9 foot control based on the particular type of  
10 machine, correct?

11 A. Yes, he did.

12 MR. HARTMAN: No further questions.

13 MR. ROBINSON: We will read the transcript if  
14 that's okay with you. It seems to be the safest  
15 way to go.

16 THE WITNESS: Preferred.

17 THE VIDEOGRAPHER: Off the record at 12:22 p.m.

18 FURTHER DEPONENT SAITH NOT.

19

20

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24

1     STATE OF ILLINOIS     )  
2                                 )   SS:  
3     COUNTY OF C O O K     )

4             I, Deanna Amore, a notary public within and for  
5     the County of Cook County and State of Illinois, do  
6     hereby certify that heretofore, to-wit, on the 7th  
7     day of April, 2006, personally appeared before me,  
8     at 33 North LaSalle Street, Chicago, Illinois,  
9     WILLIAM SWITALSKI, in a cause now pending and  
10    undetermined in the United States District Court  
11    for the Western District of Pennsylvania, wherein  
12    TINA LINDQUIST is the Plaintiff, and HEIM, L.P. is  
13    the Defendant.

14            I further certify that the said witness was  
15    first duly sworn to testify the truth, the whole  
16    truth and nothing but the truth in the cause  
17    aforesaid; that the testimony then given by said  
18    witness was reported stenographically by me in the  
19    presence of the said witness, and afterwards  
20    reduced to typewriting by Computer-Aided  
21    Transcription, and the foregoing is a true and  
22    correct transcript of the testimony so given by  
23    said witness as aforesaid.

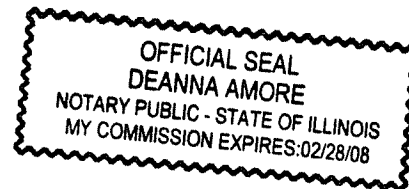
24            I further certify that the signature to the

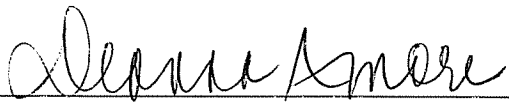
1 foregoing deposition was reserved by counsel for  
2 the respective parties.

3 I further certify that the taking of this  
4 deposition was pursuant to Notice, and that there  
5 were present at the deposition the attorneys  
6 hereinbefore mentioned.

7 I further certify that I am not counsel for nor  
8 in any way related to the parties to this suit, nor  
9 am I in any way interested in the outcome thereof.

10 IN TESTIMONY WHEREOF: I have hereunto set my  
11 hand and affixed my notarial seal this 10TH day  
12 of APRIL, 2006.



13  
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15  
16  
17  
  
18 NOTARY PUBLIC, COOK COUNTY, ILLINOIS